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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS

In re Patent Application of: )  
MCCARTHY ET AL. )  
 ) Examiner: S. Daftuar  
Serial No. 10/779,350 )  
 ) Art Unit: 2151  
Filing Date: February 13, 2004 )  
 )  
For: COMMUNICATIONS SYSTEM )  
PROVIDING MESSAGE AGGREGATION )  
FEATURES AND RELATED METHODS )  
 )

**APPELLANTS' APPEAL BRIEF**

MS Appeal Brief-Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellants' Appeal Brief together with the requisite \$500.00 large entity fee for filing a brief. Attached is credit card authorization form PTO-2038 for the requisite fee of \$500.00. If any additional extension and/or fee is required, authorization is given to charge Deposit Account No. 01-0484.

**(1) Real Party in Interest**

The real party in interest is Teamon Systems, Inc., assignee of the present application as recorded at reel 015002, frame 0720.

**(2) Related Appeals and Interferences**

At present there are no related appeals or interferences.

**(3) Status of the Claims**

Claims 1-22 are pending in the application, all of

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which being appealed herein.

**(4) Status of the Amendments**

All amendments have been entered and there are no further pending amendments. A copy of the claims involved in this appeal is attached hereto as Appendix A.

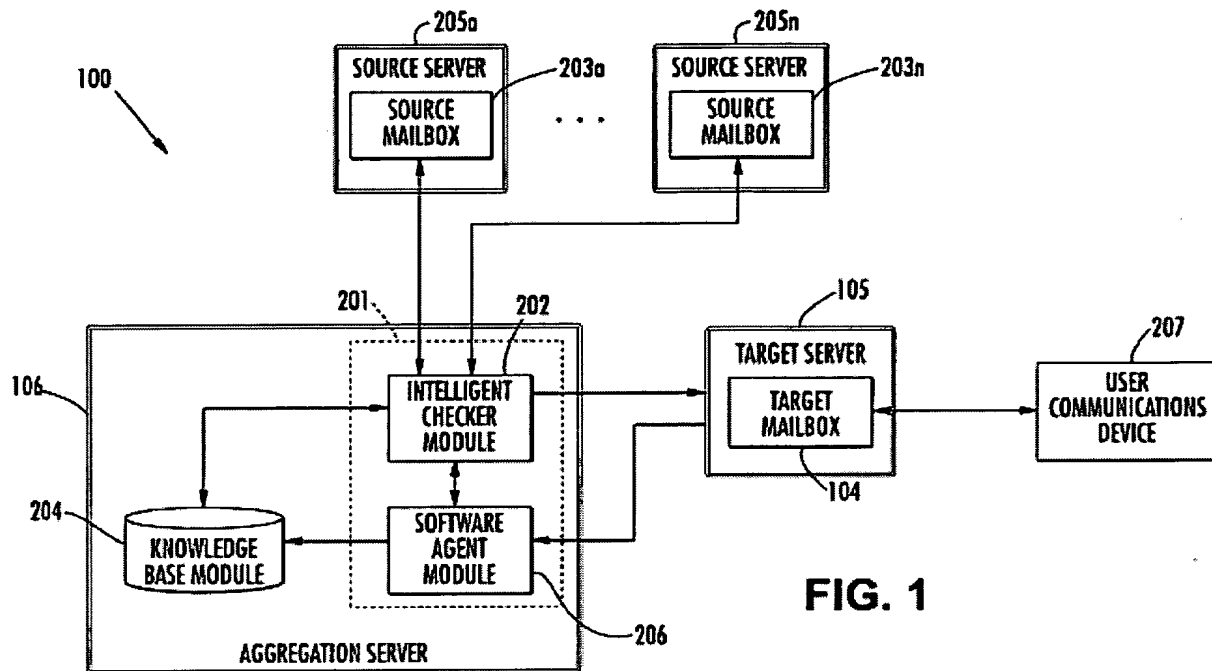
**(5) Summary of the Claimed Subject Matter**

The claimed invention is directed to a communications system, an aggregation server and associated methods as will be described with reference to FIG. 1 (reproduced below) and page 8, line 15 through page 13, line 18 (paragraph Nos. 0025-0036).

As recited in independent Claim 1, the system **100** includes a plurality of source message servers **205** for storing messages for delivery to a user and a target message server **105** having a target message box **104** associated therewith. An aggregation server **106** is also included for periodically aggregating the messages from the source message servers **205** to the target message box **104** for retrieval by the user. The target message server **105** provides a delivery failure message to the aggregation server **106** based upon a failure to deliver a message to the target message box **104**. Moreover, the aggregation server **106** increases a period of sending messages to the target message box **104** based upon a delivery failure message therefrom, and thereafter decreases the period of sending messages to the target message box based upon a successful delivery of a message thereto.

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**FIG. 1**

Independent Claim 10 is directed to a related aggregation server 106 and includes an aggregation module 201 for periodically aggregating messages stored on a plurality of source message servers 205 to a target message box 104 associated with a target message server 105 for retrieval by a user. The target message server 105 provides a delivery failure message to the aggregation module 201 based upon a failure to deliver a message to the target message box 104. A knowledge base module 204 cooperates with the aggregation module 201 to store delivery failure information for the target message box 104. The aggregation module 201 increases a period of sending messages to the target message box 104 based upon stored delivery failure information therefor, and thereafter decreases the period of sending messages to the target message box based upon a successful delivery of a message thereto.

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Independent Claim 15 is directed to a related message aggregation method, and includes periodically aggregating messages stored on a plurality of source message servers **205** to a target message box **104** for retrieval by a user, and generating delivery failure information based upon a failure to deliver a message to the target message box **104**. The method includes increasing a period of sending messages to the target message box **104** based upon the generation of delivery failure information therefor, and thereafter decreasing the period of sending messages to the target message box based upon a successful delivery of a message thereto.

Independent Claim 18 is directed to a related computer-readable medium having computer-executable modules including an aggregation module **201** for periodically aggregating messages stored on a plurality of source message servers **205** to a target message box **104** associated with a target server **105** for retrieval by a user, the target message server providing a delivery failure message to the aggregation module **201** based upon a failure to deliver a message to the target message box **104**. A knowledge base module **204** cooperates with the aggregation module **201** to store delivery failure information for the target message box **104**. The aggregation module **201** increases a period of sending messages to the target message box **104** based upon stored delivery failure information therefor, and thereafter decreases the period of sending messages to the target message box **104** based upon a successful delivery of a message thereto.

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**(6) Grounds of Rejection to be Reviewed On Appeal**

Claims 1-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,854,007 to Hammond in view of U.S. Patent No. 6,744,780 to Gu et al.

For the reasons set forth in the arguments below, the claims stand in separate groups as follows: Claims 1-9 stand as a group; Claims 10-14 stand as a group; Claims 15-17 stand as a group; and Claims 18-22 stand as a group.

**(7) Argument**

The Examiner twice rejected Claims 1-22 based upon U.S. Patent No. 6,854,007 to Hammond in view of U.S. Patent No. 6,744,780 to Gu et al. For at least the reasons set forth below, Appellants maintain that the claims are patentable over the cited combination, and the rejection should be reversed.

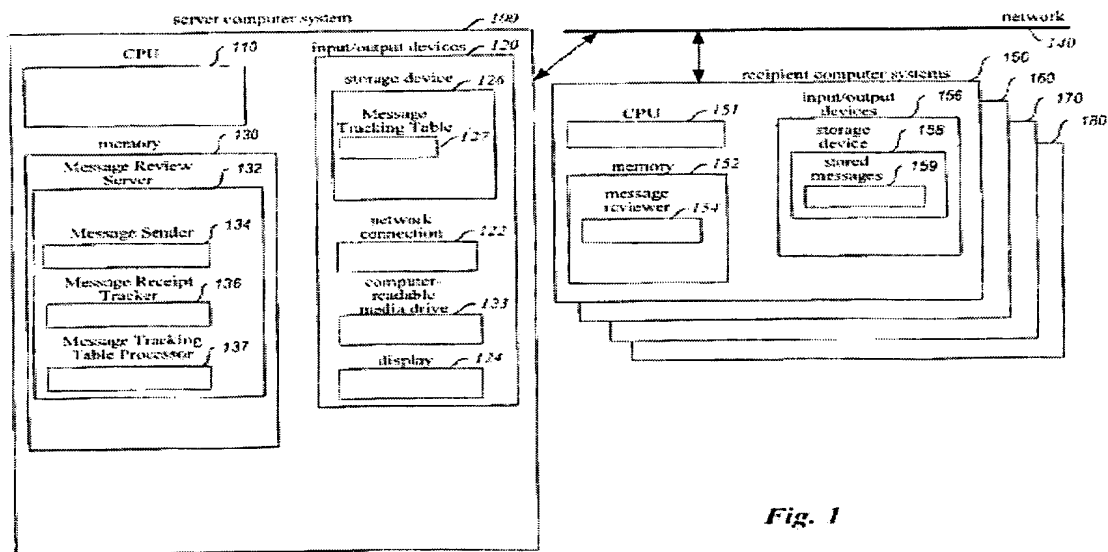
**A. Independent Claim 1 is Patentable over the Combination of Hammond and Gu et al.**

Hammond is directed to a system for enhancing the reliability of communicating with electronic messages. The system sends an electronic message to designated recipients, and then automatically helps ensure that each message has been successfully delivered and received within specified periods of time. Gu et al. is directed to a system for managing a communications network that establishes an initial polling interval for a corresponding network element. The network management system adjusts the initial polling interval to a subsequent polling interval to adaptively meet the communications traffic requirements.

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In the previous responses, Appellants pointed out that Hammond fails to teach an aggregation server for periodically aggregating messages as recited in the independent claims. In the Final Office Action, the Examiner did not address this argument. So, Appellants again emphasized that the Examiner had mischaracterized the teachings of Hammond as the message sender **134** of the Hammond system (see FIG. 1 reproduced below) merely collects the supplied message tracking information, sends the message to the specified recipients, and stores the message tracking information and the message send time in the Message Tracking Table. Hammond does not teach or fairly suggest periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user.



*Fig. 1*

Additionally, the message sender component is performing the opposite function to the one recited in the above-noted independent claims. That is, the message sender component is sending messages from a single originating server to a plurality of different recipient servers, rather than

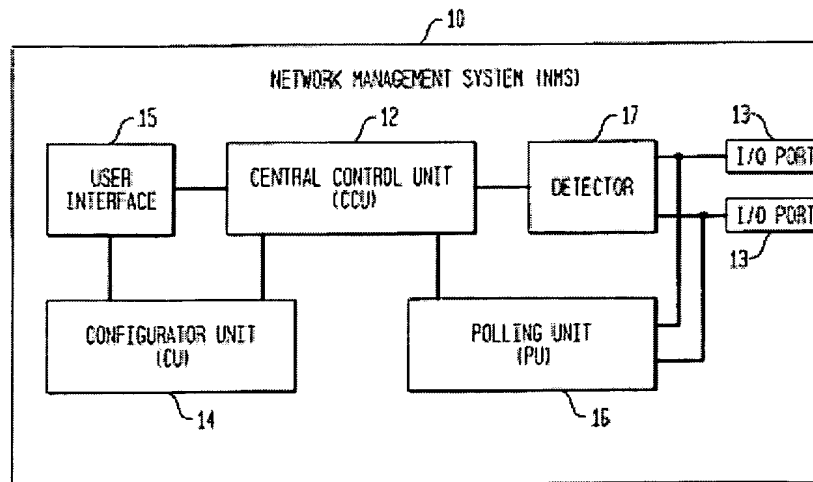
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taking received messages from a plurality of recipient servers and delivering them to a single aggregated mailbox for the user. Accordingly, the Hammond reference, as relied upon by the Examiner, fails to teach the elements recited in the above-noted independent Claim 1, and the rejection should be reversed for this reason alone.

Furthermore, the Gu et al. reference (FIG. 1 reproduced below) also does not include an aggregation server for periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user. As such, the Gu et al. reference cannot make up for the deficiencies of the Hammond reference as discussed above.

**FIG. 1**



In the Advisory Action mailed December 16, 2005, the Examiner addressed Appellants' arguments and again specifically relied upon column 5, lines 1-4 (reproduced below) of Hammond as allegedly teaching the use an aggregation server for periodically aggregating the messages.

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The Message Sender component collects the supplied message tracking information, sends the message to the specified recipients, and stores the message tracking information and the message send time in the Message Tracking Table.

As should be clear from a careful reading of the portion of Hammond cited by the Examiner, Hammond is concerned with message tracking information and there is no teaching of periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user, as claimed.

Moreover, in the previous response, Appellants also argued that there was no proper motivation for combining the references as the Examiner proposed, as doing so would have rendered Hammond unsatisfactory for its intended purpose. In response, the Examiner pointed to a teaching in Gu et al. (col. 3, lines 57-60 reproduced below) as support for the allegedly obvious combination of references.

For example, if a network element 20 fails to send a fault message during an initial polling interval or an initial group of polling intervals, the polling unit 16 increases the initial polling interval to a subsequent polling interval.

As is clear from a careful reading of the portion of Gu et al. relied upon by the Examiner, Gu et al. states that an initial polling interval may be increased responsive to a failure of a network element to send a fault message. Yet, Claim 1 recites that the aggregation server increases the period of sending messages to the target server based upon receiving a delivery failure message therefrom.

Accordingly, Appellants emphasize that the passage cited by the Examiner in Gu et al. is actually contrary to the



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claimed recitation of increasing the period of sending messages. That is, Gu et al. teaches increasing a polling interval based upon not receiving a failure message, whereas Claim 1 recites decreasing a sending interval (i.e., increasing the period of sending) upon receiving a failure notification. As such, the Examiner has still failed to provide proper motivation or suggestion to combine the references, and the rejection should be reversed for this reason as well.

As the Examiner is aware, to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference itself or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim features. The initial burden is on the Examiner to provide some suggestion of the desirability of doing what the Applicants have done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the reference must expressly or impliedly suggest the claimed invention or the Examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the reference. Both the suggestion to make the claimed combination and the reasonable expectation of success must be founded in the prior art and not in Applicants' disclosure.

There is simply no teaching or suggestion in the cited references to provide the combination of features as

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claimed. Accordingly, for at least the reasons given above, Appellants maintain that the cited references do not disclose or fairly suggest the invention as set forth in independent Claim 1. Furthermore, no proper modification of the teachings of these references could result in the invention as claimed. Thus, the rejection under 35 U.S.C. §103(a) should be properly reversed. The respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

B. Independent Claim 10 is Patentable over the Combination of Hammond and Gu et al.

As pointed out above, Hammond fails to teach an aggregation server including an aggregation module for periodically aggregating messages stored on a plurality of source message servers to a target message box associated with a target message server for retrieval by a user, as recited in Claim 10. Furthermore, the combination of Hammond and Gu et al. does not teach an aggregation module that increases a period of sending messages to the target message box based upon stored delivery failure information therefor, and thereafter decreases the period of sending messages to the target message box based upon a successful delivery of a message thereto, as further recited in Claim 10.

Appellants again emphasize that the Examiner has mischaracterized the teachings of Hammond as the message sender of the Hammond system merely collects the supplied message tracking information, sends the message to the specified recipients, and stores the message tracking information and the message send time in the Message Tracking

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Table. Hammond does not teach or fairly suggest periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user.

Additionally, the message sender component is performing the opposite function to the one recited in the above-noted independent claims. That is, the message sender component is sending messages from a single originating server to a plurality of different recipient servers, rather than taking received messages from a plurality of recipient servers and delivering them to a single aggregated mailbox for the user. Accordingly, the Hammond reference, as relied upon by the Examiner, fails to teach the elements recited in the above-noted independent Claim 10, and the rejection should be reversed for this reason alone.

Furthermore, the Gu et al. reference also does not include an aggregation module for periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user. As such, the Gu et al. reference cannot make up for the deficiencies of the Hammond reference as discussed above.

Appellants also maintain that there is no proper motivation for combining the references as the Examiner proposed, as doing so would render Hammond unsatisfactory for its intended purpose. As is clear from a careful reading of the portions of Gu et al. relied upon by the Examiner, Gu et al. states that an initial polling interval may be increased responsive to a failure of a network element to send a fault message. Yet, Claim 10 recites that the aggregation module increases the period of sending messages to the target server based upon stored delivery failure information therefor.

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Gu et al. teaches increasing a polling interval based upon not receiving a failure message, whereas Claim 10 recites decreasing a sending interval (i.e., increasing the period of sending) upon stored delivery failure information. As such, the Examiner has still failed to provide proper motivation or suggestion to combine the references, and the rejection should be reversed for this reason as well.

There is simply no teaching or suggestion in the cited references to provide the combination of features as claimed. Accordingly, for at least the reasons given above, Appellants maintain that the cited references do not disclose or fairly suggest the invention as set forth in independent Claim 10. Furthermore, no proper modification of the teachings of these references could result in the invention as claimed. Thus, the rejection under 35 U.S.C. §103(a) should be properly reversed. The respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

C. Independent Claim 15 is Patentable over the Combination of Hammond and Gu et al.

As pointed out above, Hammond fails to teach periodically aggregating messages stored on a plurality of source message servers to a target message box associated with a target message server for retrieval by a user, as recited in Claim 15. Furthermore, the combination of Hammond and Gu et al. does not teach an increasing a period of sending messages to the target message box based upon stored delivery failure information therefor, and thereafter decreasing the period of

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sending messages to the target message box based upon a successful delivery of a message thereto, as further recited in Claim 15.

Appellants again emphasize that the Examiner has mischaracterized the teachings of Hammond as the message sender of the Hammond system merely collects the supplied message tracking information, sends the message to the specified recipients, and stores the message tracking information and the message send time in the Message Tracking Table. Hammond does not teach or fairly suggest periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user.

Additionally, the message sender component is performing the opposite function to the one recited in the above-noted independent claims. That is, the message sender component is sending messages from a single originating server to a plurality of different recipient servers, rather than taking received messages from a plurality of recipient servers and delivering them to a single aggregated mailbox for the user. Accordingly, the Hammond reference, as relied upon by the Examiner, fails to teach the elements recited in the above-noted independent Claim 15, and the rejection should be reversed for this reason alone.

Furthermore, the Gu et al. reference also does not include periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user. As such, the Gu et al. reference cannot make up for the deficiencies of the Hammond reference as discussed above.

Appellants also maintain that there is no proper motivation for combining the references as the Examiner

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proposed, as doing so would render Hammond unsatisfactory for its intended purpose. As is clear from a careful reading of the portions of Gu et al. relied upon by the Examiner, Gu et al. states that an initial polling interval may be increased responsive to a failure of a network element to send a fault message. Yet, Claim 15 recites increasing the period of sending messages to the target server based upon stored delivery failure information therefor.

Gu et al. teaches increasing a polling interval based upon not receiving a failure message, whereas Claim 10 recites decreasing a sending interval (i.e., increasing the period of sending) of sending messages to the target message box upon the generation of delivery failure information therefor. As such, the Examiner has still failed to provide proper motivation or suggestion to combine the references, and the rejection should be reversed for this reason as well.

There is simply no teaching or suggestion in the cited references to provide the combination of features as claimed. Accordingly, for at least the reasons given above, Appellants maintain that the cited references do not disclose or fairly suggest the invention as set forth in independent Claim 15. Furthermore, no proper modification of the teachings of these references could result in the invention as claimed. Thus, the rejection under 35 U.S.C. §103(a) should be properly reversed. The respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

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D. Independent Claim 18 is Patentable over the Combination of Hammond and Gu et al.

As pointed out above, Hammond fails to teach an aggregation module for periodically aggregating messages stored on a plurality of source message servers to a target message box associated with a target message server for retrieval by a user, as recited in Claim 18. Furthermore, the combination of Hammond and Gu et al. does not teach an aggregation module that increases a period of sending messages to the target message box based upon stored delivery failure information therefor, and thereafter decreases the period of sending messages to the target message box based upon a successful delivery of a message thereto, as further recited in Claim 18.

Appellants again emphasize that the Examiner has mischaracterized the teachings of Hammond as the message sender of the Hammond system merely collects the supplied message tracking information, sends the message to the specified recipients, and stores the message tracking information and the message send time in the Message Tracking Table. Hammond does not teach or fairly suggest periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user.

Additionally, the message sender component is performing the opposite function to the one recited in the above-noted independent claims. That is, the message sender component is sending messages from a single originating server to a plurality of different recipient servers, rather than taking received messages from a plurality of recipient servers and delivering them to a single aggregated mailbox for the

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user. Accordingly, the Hammond reference, as relied upon by the Examiner, fails to teach the elements recited in the above-noted independent Claim 18, and the rejection should be reversed for this reason alone.

Furthermore, the Gu et al. reference also does not include an aggregation module for periodically aggregating messages from a plurality of source message servers to a target message box for retrieval by a user. As such, the Gu et al. reference cannot make up for the deficiencies of the Hammond reference as discussed above.

Appellants also maintain that there is no proper motivation for combining the references as the Examiner proposed, as doing so would render Hammond unsatisfactory for its intended purpose. As is clear from a careful reading of the portions of Gu et al. relied upon by the Examiner, Gu et al. states that an initial polling interval may be increased responsive to a failure of a network element to send a fault message. Yet, Claim 18 recites that the aggregation module increases the period of sending messages to the target server based upon stored delivery failure information therefor.

Gu et al. teaches increasing a polling interval based upon not receiving a failure message, whereas Claim 18 recites decreasing a sending interval (i.e., increasing the period of sending) upon stored delivery failure information. As such, the Examiner has still failed to provide proper motivation or suggestion to combine the references, and the rejection should be reversed for this reason as well.

There is simply no teaching or suggestion in the cited references to provide the combination of features as claimed. Accordingly, for at least the reasons given above,



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Appellants maintain that the cited references do not disclose or fairly suggest the invention as set forth in independent Claim 18. Furthermore, no proper modification of the teachings of these references could result in the invention as claimed. Thus, the rejection under 35 U.S.C. §103(a) should be properly reversed. The respective dependent claims, which recite yet further distinguishing features, are also patentable over the prior art and require no further discussion herein.

#### CONCLUSIONS

In view of the foregoing arguments, it is submitted that all of the claims are patentable over the prior art. Accordingly, the Board of Patent Appeals and Interferences is respectfully requested to reverse the earlier unfavorable decision by the Examiner.

Respectfully submitted,

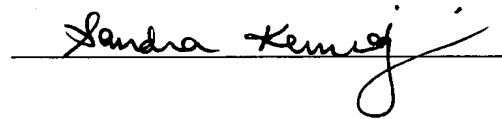
  
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**CERTIFICATE OF MAILING**

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**APPENDIX A - CLAIMS ON APPEAL**  
**FOR U.S. PATENT APPLICATION SERIAL NO. 10/779,350**

1. A communications system comprising:  
a plurality of source message servers for storing messages for delivery to a user and a target message server having a target message box associated therewith; and  
an aggregation server for periodically aggregating the messages from said source message servers to the target message box for retrieval by the user;  
said target message server providing a delivery failure message to said aggregation server based upon a failure to deliver a message to the target message box;  
said aggregation server increasing a period of sending messages to the target message box based upon a delivery failure message therefrom, and thereafter decreasing the period of sending messages to the target message box based upon a successful delivery of a message thereto.
2. The communications system of Claim 1 wherein said aggregation server selectively re-sends messages for which delivery failure messages are received.
3. The communications system of Claim 1 wherein said aggregation server comprises an intelligent checker module for aggregating the messages from said source servers to said target message box.

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4. The communications system of Claim 3 wherein said aggregation server further comprises a software agent module having a unique address associated therewith; wherein said intelligent checker module sends the unique address with the messages to the target message box; wherein said target message server sends the delivery failure messages to the unique address; and wherein said software agent module associates the delivery failure messages with the target message box.

5. The communications system of Claim 4 wherein said aggregation server further comprises a knowledge base module for cooperating with said software agent module for storing delivery failure information for the target message box, and wherein said intelligent checker module cooperates with said knowledge base module to increase or decrease the period of sending based upon the stored delivery failure information.

6. The communications system of Claim 5 wherein said knowledge base module cooperates with said software agent module to store the delivery failure information for the target message box based upon a source message box identifier and a message identifier associated therewith.

7. The communications system of Claim 1 further comprising a communications device associated with the user for accessing the messages from the target message box.

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8. The communications system of Claim 7 wherein said communications device comprises a mobile wireless communications device.

9. The communications system of Claim 1 wherein the messages comprise electronic mail (e-mail) messages.

10. An aggregation server comprising:  
an aggregation module for periodically aggregating messages stored on a plurality of source message servers to a target message box associated with a target message server for retrieval by a user, the target message server providing a delivery failure message to said aggregation module based upon a failure to deliver a message to the target message box; and  
a knowledge base module for cooperating with said aggregation module to store delivery failure information for the target message box;

said aggregation module increasing a period of sending messages to the target message box based upon stored delivery failure information therefor, and thereafter decreasing the period of sending messages to the target message box based upon a successful delivery of a message thereto.

11. The aggregation server of Claim 10 wherein said aggregation module selectively re-sends messages for which delivery failure messages are received.

12. The aggregation server of Claim 10 wherein said aggregation module comprises:

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an intelligent checker module for periodically aggregating messages stored on the plurality of source message servers to the target message box; and

a software agent module having a unique address associated therewith for associating the delivery failure messages with the target message box;

said intelligent checker module sending the unique address with the messages to the target message box, and the target message server sending the delivery failure messages to the unique address.

13. The aggregation server of Claim 12 wherein said knowledge base module cooperates with said software agent module to store the delivery failure information for the target message box based upon a source message box identifier and a message identifier associated therewith.

14. The aggregation server of Claim 10 wherein the messages comprise electronic mail (e-mail) messages.

15. A message aggregation method comprising:  
periodically aggregating messages stored on a plurality of source message servers to a target message box for retrieval by a user;

generating delivery failure information based upon a failure to deliver a message to the target message box; and

increasing a period of sending messages to the target message box based upon the generation of delivery failure information therefor, and thereafter decreasing the

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period of sending messages to the target message box based upon a successful delivery of a message thereto.

16. The method of Claim 15 further comprising selectively re-sending messages for which delivery failure messages are received.

17. The method of Claim 15 wherein the messages comprise electronic mail (e-mail) messages.

18. A computer-readable medium having computer-executable modules comprising:

an aggregation module for periodically aggregating messages stored on a plurality of source message servers to a target message box associated with a target server for retrieval by a user, the target message server providing a delivery failure message to said aggregation module based upon a failure to deliver a message to the target message box; and

a knowledge base module for cooperating with said aggregation module to store delivery failure information for the target message box;

said aggregation module increasing a period of sending messages to the target message box based upon stored delivery failure information therefor, and thereafter decreasing the period of sending messages to the target message box based upon a successful delivery of a message thereto.

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19. The computer-readable medium of Claim 18 wherein said aggregation module selectively re-sends messages for which delivery failure messages are received.

20. The computer-readable medium of Claim 18 wherein said aggregation module comprises:

an intelligent checker module for aggregating messages stored on the plurality of source message servers to the target message box; and

a software agent module having a unique address associated therewith for associating the delivery failure messages with the target message box;

said intelligent checker module sending the unique address with the messages to the target message box, and the target message server sending the delivery failure messages to the unique address.

21. The computer-readable medium of Claim 20 wherein said knowledge base module cooperates with said software agent module to store the delivery failure information for the target message box based upon a source message box identifier and a message identifier associated therewith.

22. The computer-readable medium of Claim 18 wherein the messages comprise electronic mail (e-mail) messages.



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**Evidence Appendix**

None

**Related Proceedings Appendix**

None